

Amendment 2469 — Requires the notification and consent of landowners before their property can be included in any federally designated National Heritage Area.

This amendment requires private landowners be notified that their property could be included within the boundaries of any federally funded National Heritage Area (NHA) and ensures that private property can be contained within a Heritage Area only if a landowner provides written consent to such inclusion.

This Bill Allows Landowners Within Only One Of The 49 National Heritage Areas To Remove Their Property From A Heritage Area And Allows For Private Property To Be Included Without The Explicit Consent Of Landowners

H.R. 2996, the Department of Interior appropriations bill for Fiscal Year 2010, amends the Omnibus Public Land Management Act of 2009 to require landowners within the Northern Plains Heritage Area be notified that their property will be included within the NHA and to allow landowners to withdraw from inclusion in the area by delivering a written notice to the NHA's management entity.

While this is a step in the right direction to protect landowners from federal management of their property, there are several problems with this provision.

First, it applies to a single NHA—the Northern Plains Heritage Area located in North Dakota. There are 49 NHAs throughout the U.S.¹ Property owners in each of the other 48 NHAs should be provided equal protection as those in the North Dakota NHA. Notably, both of North Dakota's Senators voted against an amendment last year to require landowners in every NHA be notified if their property was within the boundaries of the heritage area.²

Second, even while trying to give an appearance of protecting private property rights, the provision places the burden on landowners to take steps to have their property removed from a NHA. No one's private property should be included in a federally sponsored heritage area without first receiving the consent of the landowner.

This amendment would ensure equal protection of all landowners within every NHA by requiring that the management entities first notify those within the area of the

¹ National Park Service website, "National Heritage Areas," May 29, 2009, <http://www.nps.gov/history/heritageareas/VST/Contact49.pdf>.

² [S. Amdt. 4520](#) to [S. 2739](#), the Consolidated Natural Resources Act of 2008, Roll Call Vote 99, 110th Congress, 2nd Session, April 10, 2008, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=2&vote=00099.

designation and then receive written consent of landowners to include their property within any heritage area.

North Dakota Heritage Area Demonstrated How Congress Was Misled About Community Support And Negative Impact Of NHA Designations

Special interest groups and lobbyists who promote heritage area designations have misled Congress into believing that communities support being included because it opens up new sources of federal funds for local projects with no downsides and no impact on private property rights..

The North Dakota Northern Plains Heritage Area (NPNHA) experience is the latest example to demonstrate how misleading and inaccurate these claims are.

In lobbying Congress to make the designation, North Dakota state Senator Tracy Potter wrote, "I guarantee you, we're in the land where the deer and buffalo roam, and there has been nary a discouraging word about the establishment of the NPNHA."³

Potts also claimed "discussions about creation of a NPNHA along the Missouri River have taken place in a completely transparent and inclusive way. In public hearings before city and county commissioners the meaning of such a program has been discussed and the commissioners have unanimously provided their encouragement."

The Senate approved the North Dakota Northern Plains Heritage Area designation on March 19, 2009 and the President signed the bill into law on March 30. Since then, fierce local opposition quickly erupted that is now forcing Congress to revisit the issue.

In July, the *Bismarck Tribune* reported that "since the president's pen touched paper, all heck has broken loose" with opponents of the National Heritage Area saying "they were ambushed, that the new designation sprang on them like a cat on their back."⁴

A number of property owners within the designated area quickly made it known that they do not want to be part of the heritage area.

The Farm Bureau calls the NHA designation "the largest regulatory taking of private property in the history of North Dakota."

³ NPNHA Powerpoint, North Dakota Farm Bureau, April 16, 2009, www.ndfb.org/uploads/resources/659/npnha-presentation-1.ppt.

⁴ Lauren Donovan. "Whose Heritage?," The Bismarck Tribune, July 12, 2009.

The North Dakota Policy Council “says Potter was deceitful when he testified to Congress that public hearings were held on the heritage area, when none were. The council’s director, Brett Narloch, says Potter broke federal law by using federal grant funds to hire a lobby firm and to personally lobby for the designation.”

Even the NPS has found “the feasibility study produced by the NPHF did not meet all of the criteria for designation as a NHA. It did not include the existence of significant levels of public involvement and support and the local commitment necessary for successful planning and implementation of a NHA.”

“It has become clear that since people knew little about it, they didn't know what it would mean to them,” according to *Bismarck Tribune*.⁵

Potter now admits that the foundation saw Congress, not the public, as its audience during the feasibility study process.

According to the North Dakota Farm Bureau, “experience shows that the rights of residential and commercial property owners are often undermined in National Heritage Areas. In the name of preserving the historic ‘landscape’ of the area in question, federal officials often develop management plans that are little more than zoning imposed by Washington bureaucrats.”⁶

The new bureaucracy will extend beyond Washington.

“This NHA will create a bureaucracy that will outlive me,” exclaimed Tracy Potter, Executive Director of the Northern Plains Heritage Foundation at a meeting January 23, 2009.

And if there was any question that this new federally funded land management bureaucracy might affect private property, a land owner in Mercer County who had been offered a coal lease that would allow the development of resources on his land has already lost the lease as a result of the NHA designation.

“The folks who manage the Knife River Indian Village, who will be among the beneficiaries of this NHA designation, learned of the coal lease and managed to get it withdrawn,” according to a report by North Dakota radio station AM1100 WZFG.⁷

Nearly One In Five Americans Live Within A National Heritage Area, Yet Few Americans Know What A NHA is Or How It Affects Their Property

⁵ Lauren Donovan. “Whose Heritage?,” The Bismarck Tribune, July 12, 2009.

⁶ Statement by Five county Farm Bureaus affected by the Northern Plains National Heritage Area designation, “The stick is much bigger than the carrot,” April 25, 2009, <http://www.ndfb.org/uploads/resources/660/the-stick-is-much-bigger-than-the-carrot.pdf>.

⁷ Radio host Rob Port, AM1100 WZFG, July 19 2009, <http://www.kxmb.com/getArticle.asp?ArticleId=408802>.

More than 187,000 square miles and 18 percent of the U.S. population are now contained within NHAs.⁸ Yet, very few Americans are even aware that their homes have been placed within a heritage area or the impact this designation may have on their property.

There is no federal statute to authorize NHAs or even to set criteria for eligibility for a NHA designation.

The U.S. Department of Interior defines a “national heritage area” as “a place designated by the United States Congress where natural, cultural, historic and recreational resources combine to form a cohesive, nationally-distinctive landscape arising from patterns of human activity shaped by geography. These areas tell nationally important stories about our nation and are representative of the national experience through both the physical features that remain and the traditions that have evolved within them.”⁹

Advocates claim the proposed NHAs are supported by the local citizens within the designated areas.

This claim appears to be based more on a lack of public protest than actual public interest and the lack of public protest is more likely to be the result of an absence of public knowledge than a presence of public support.

For example, only after an Arizona citizen noticed government officials marking his land was he informed for the first time that the area was slated to be designated as the Yuma Crossing National Heritage Area. When he contacted the local Farm Bureau, a meeting was set up for all affected landowners. At that meeting, only one person of the approximately 600 present responded in the affirmative when asked if they were aware of the future designation.¹⁰

One NHA executive director stated, “We are driven by local interest to the degree if we were told to go away, we would.”¹¹

Taxpayers should not have to tell uninvited intruders to “go away.” They should, rather, be the ones to determine if an NHA designation is invited into their community in the first place.

⁸ “An Introduction to National Heritage Areas” PowerPoint, National Park Service, <http://www.nps.gov/history/heritageareas/REP/introheritageareas.pdf>

⁹ National Park Service website, “What is a National Heritage Area?,” accessed October 9, 2008; <http://www.nps.gov/history/heritageareas/FAQ/INDEX.HTM> .

¹⁰ John J. Miller, “An Ugly Heritage,” National Review, January 28, 2008.

¹¹ Howard Kittell, September 7, 2001, Executive Director, Shenandoah Valley Battlefields Foundation, at a meeting in Monterey, referring to the McDowell battlefield

According to the *Washington Post*, “one of the more controversial proposed heritage areas, the ‘Journey Through Hallowed Ground’ heritage area ... runs from Charlottesville to Gettysburg along Route 15, past many American Revolution and Civil War sites.” Peyton Knight of the National Center for Public Policy Research notes that “we should never seek to honor the heroes of our nation's founding by trampling the sacred principles for which they fought and died—namely property rights and limited, local government.”¹²

Ann Corcoran, who unsuccessfully fought to defeat the designation of the Hallowed Ground Civil War heritage designation around her western Maryland farm, believes “this is backdoor federal land-use planning. ... Once this is in place, there will be pressure on the local governments to plan their land use around the theme of heritage preservation. ... I believe in preservation. I just believe in doing it privately,” said Corcoran, who once erected plastic pink flamingos on her farm to make the point that landowners are entitled to bad taste.”¹³

According to the National Park Service, only a small percentage of funding for NHAs has come from local or private sources. Since NPS support for NHAs began, only 27 percent of the funding has been derived from private sources and even less, 17 percent, has been provided by local governments.¹⁴ Based upon the resources contributed, it is difficult to argue that NHAs are priorities of local residents or their communities.

Efforts to designate NHAs are often sponsored and promoted mainly by two factions, environmental groups opposed to commercial development and wealthy estate owners who want to preserve the rural charm of their surroundings.¹⁵

NHAs Are Un-elected Groups That Seek To Manage Non-Federal Lands, Including Private Property, With Federal Funds

NHAs are not federally owned lands, but rather federally supported partnerships between the National Park Service (NPS) and local entities which oversee areas designated by Congress that may include natural, historic, and cultural resources.

The local coordinating entity is “a private non-profit corporation or a public commission.”¹⁶ The NPS supports the NHAs through federal recognition, funding, and technical assistance.¹⁷

¹² Paul Kane. “Heritage Areas vs. Property Rights; With Designations on Rise, Conservatives Sound Alarm,” *Washington Post*, November 30, 2007, Page A21.

¹³ Ben Evans. “National Heritage Areas Catching On,” *The Washington Post/Associated Press*, November 25, 2007; <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/25/AR2007112500585.html> .

¹⁴ “An Introduction to National Heritage Areas” PowerPoint, National Park Service, <http://www.nps.gov/history/heritageareas/REP/introheritageareas.pdf> .

¹⁵ Cheryl Chumley and Ronald D. Utt. “National Heritage Areas: Costly Economic Development Schemes that Threaten Property Rights,” *The Heritage Foundation Background*, October 23, 2007.

According to the NPS, communities benefit from NHA designation because “federal financial assistance provides valuable ‘seed’ money that covers basic expenses such as staffing, and leverages other money from state, local and private sources.”¹⁸

So while NHAs areas are not government owned properties, federal funds are used to establish and prop up a local entity that is essentially a government sponsored enterprise that advocates usages of land, including private property, within a local community under the guise of promoting tourism and conservation.

“Once a heritage area is designated by Congress, the NPS typically enters into a cooperative agreement, or compact, with the designated management entity, often comprised of local activists, to help plan and organize the area,” according to the Congressional Research Service.¹⁹

“The management plans for the NHAs are formed through the collaborative efforts of a variety of government and non-government sources, from the NPS to the local government to the environmental activist and community business leader. The Secretary of the Interior has the final say whether the plan is acceptable or not, and the NPS helps applicants to get this approval.”²⁰

Why NPS claims to serve only an advisory role, NPS officials serve on the management authority of at least one NHA. The Blackstone Heritage Area located within Massachusetts and Rhode Island is overseen by a 19-member commission that “consists of representatives from the National Park Service, state and local governments, and valley-wide interests, and oversees the corridors operations.”²¹

There Are Real Consequences For Landowners With Property Within A National Heritage Area, Such As Restrictive Zoning and Increased Regulation

More and more private property is being incorporated under NHA designations, usually with little debate or public knowledge or input. Over the past two decades, Congress has established 49 NHAs.

¹⁶ National Park Service website, “What is a National Heritage Area?,” accessed October 9, 2008; <http://www.nps.gov/history/heritageareas/FAQ/INDEX.HTM> .

¹⁷ Vincent, Carol Hardy and David Whiteman. [Heritage Areas: Background, Proposals, and Current Issues](#), Congressional Research Service, December 27, 2007.

¹⁸ National Park Service website, “What is a National Heritage Area?,” accessed October 9, 2008; <http://www.nps.gov/history/heritageareas/FAQ/INDEX.HTM> .

¹⁹ Carol Hardy Vincent and David L. Whiteman. “Heritage Areas: Background, Proposals and Current Issues,” Congressional Research Service Report for Congress, July 20, 2007, page 8.

²⁰ Cheryl Chumley and Ronald D. Utt. “National Heritage Areas: Costly Economic Development Schemes that Threaten Property Rights,” The Heritage Foundation Backgrounder, October 23, 2007, page 3, <http://www.heritage.org/research/smartgrowth/bg2080.cfm> .

²¹ Blackstone River Valley National Heritage Corridor Commission, “The Next Ten Years,” October 2007.

While the National Park Service notes that zoning and land-use decisions remain under the jurisdiction of local governments and that the coordinating entity is prohibited from using federal funds to acquire property,²² the establishment of NHAs can, in fact, have real impacts on communities and private property.

The potential consequences of these areas include restrictive zoning laws, increased government regulation of private property management, and even acquisition of land. There are also costs to manage the NHA, paid for with federal and local funds derived from taxation.

When the local managing entities are given no official authority over land and land cannot be acquired with federal funds, “management entities of heritage areas are allowed to receive or purchase real property,” according to the Government Accountability Office (GAO).²³ GAO also found “most of the management plans state that local governments’ participation will be crucial to the success of the heritage area and encourage local governments to implement land use policies that are consistent with the plan. Some plans offer to aid local government planning activities through information sharing or technical or financial assistance to achieve their cooperation.”²⁴

This underscores that a focus of NHAs is often advocacy for “planning” of “land use” that may result in the enactment of restrictive zoning laws.

Although a private citizen may still own the land within a NHA, the ability to decide how to use the land may be compromised. Landowners could, for example, be forbidden from making basic decisions, such as whether or not trees can be cut down or whether certain crops may be planted.

The ability to “coordinate” local land use is one of the foremost goals of NHAs, and ultimately adding more restrictions on land owners’ use of their own private property is the goal for many of the public organizations that manage NHAs.

GAO notes that “some management plans encourage local governments to implement land use policies that are consistent with the heritage areas’ plans and offer to aid their planning activities through matching grants.”²⁵

²² National Park Service website, “What is a National Heritage Area?,” accessed October 9, 2008; <http://www.nps.gov/history/heritageareas/FAQ/INDEX.HTM> .

²³ Testimony of Barry T. Hill, Director Natural Resources and Environment, United States General Accounting Office, before the U.S. Senate Committee on Energy and Natural Resources, “NATIONAL PARK SERVICE: A More Systematic Process for Establishing National Heritage Areas and Actions to Improve Their Accountability Are Needed,” March 30, 2004; http://www.nps.gov/history/heritageareas/LEG/gao_report.pdf .

²⁴ Testimony of Barry T. Hill, Director Natural Resources and Environment, United States General Accounting Office, before the U.S. Senate Committee on Energy and Natural Resources, “NATIONAL PARK SERVICE: A More Systematic Process for Establishing National Heritage Areas and Actions to Improve Their Accountability Are Needed,” March 30, 2004; http://www.nps.gov/history/heritageareas/LEG/gao_report.pdf .

²⁵ Testimony of Barry T. Hill, Director Natural Resources and Environment, United States General Accounting Office, before the U.S. Senate Committee on Energy and Natural Resources, “NATIONAL PARK SERVICE: A More Systematic Process for

In providing an example of management plans for others to follow, the National Park Service highlights a strategy that calls on NHAs to “support sustainable land use, open space, and greenway planning and preservation.”²⁶

The National Parks Advisory Board states that “emerging and designated National Heritage Areas benefit from the National Park Service’s expertise and provide a stronger vehicle for Congress to effectively utilize the National Park Service to achieve publicly supported conservation and preservation.”²⁷

It also notes, “The National Heritage Area approach, with its networks of relationships and ability to leverage resources, can serve as a model for achieving National Park Service conservation goals.” The Board does not say “as a model for *locally* supported goals.”

Decisions regarding a home owner’s or a community’s land use should not be made to meet the goals of bureaucrats or special interest groups funded with taxpayer dollars.

Many National Heritage Area Management Plans Explicitly Outline Their Goals To Regulate Land Use

“National Heritage Areas are the Kelo decision and earmarks all rolled into one. NHAs are preservation zones where land use and private property rights can be restricted. They give the NPS and preservation interest groups substantial influence by giving them the authority to create land use management plans and the authority to disperse federal dollars to local governments to promote their plans,” according to the National Center for Public Policy Research.²⁸

The National Trust for Historic Preservation is a leading Washington advocacy group for NHAs and also a member of the board of the Journey Through Hallowed Ground NHA. In a publication entitled, “Smart Growth Tools for Main Street,” the National Trust for Historic Preservation claims that “too often, property rights are misunderstood. Some people erroneously believe that property rights are absolute.” It also notes that “sensible land-use laws almost always enhance, rather than depress, property values.”²⁹

Establishing National Heritage Areas and Actions to Improve Their Accountability Are Needed,” March 30, 2004; http://www.nps.gov/history/heritageareas/LEG/gao_report.pdf .

²⁶ <http://www.nps.gov/history/heritageareas/REP/notebook.pdf>, page 29.

²⁷ <http://www.nps.gov/history/heritageareas/NHAreport.pdf> .

²⁸ National Center for Public Policy Research, “Coalition Letter Detailing Risks of National Heritage Area Designation,” September 4, 2007, www.nationalcenter.org/NHACoalitionLetter0907.pdf .

²⁹ http://www.nationaltrust.org/smartgrowth/toolkit_propertyrights.pdf

The stated strategies for some NHAs include plans to enact greater regulation of land use within a community.

The Lehigh and Delaware Canal National Heritage Corridor Management Plan states “careful land management will encourage well designed development in appropriate places, lessening the homogenization caused by urban sprawl.”³⁰

The Management Plan for the Blackstone River Valley National Heritage Corridor located in Rhode Island and Massachusetts states that, to achieve “better land use,” the “commission will be a strong voice for local land use planning and regulatory measures.” Furthermore, the plan commits to work “to enact ordinances that preserve open spaces.”³¹

The National Heritage Area Comprehensive Plan for the city of Wheeling, West Virginia also illustrates the use of zoning and regulation by NHAs. “Key recommendations of the plan include...the institution of a viable historic conservation strategy to preserve the essence of the City’s historic heritage (as described and adopted in the Wheeling National Heritage Area Plan). This strategy should include expanded use of historic zoning districts that include measures to regulate building renovation and demolition as well as the design characteristics of new development.”³²

The Senate Has Never Examined The Impact Of National Heritage Area Designations On Private Property

The investigative arm of Congress, the Government Accountability Office (GAO), noted in 2004 that the designating legislation and the management plans for some NHAs provide assurances that property rights will be protected. But, according to GAO, NHA management plans “encourage local governments to implement land use policies that are consistent with the heritage areas’ plans, which may allow the heritage areas to indirectly influence zoning and land use planning in ways that could restrict owners’ use of their property.”³³

³⁰ http://www.nps.gov/history/history/online_books/heritage/dele.pdf, page 32.

³¹ “Cultural Heritage and Land Management Plan for the Blackstone River Valley National Heritage Corridor,” October 21, 1989, page 62; http://www.nps.gov/history/history/online_books/blac/chlm.pdf

³² Wheeling Comprehensive Plan - 1997 Update, page 2.

³³ Testimony of Barry T. Hill, Director Natural Resources and Environment, United States General Accounting Office, before the U.S. Senate Committee on Energy and Natural Resources, “NATIONAL PARK SERVICE: A More Systematic Process for Establishing National Heritage Areas and Actions to Improve Their Accountability Are Needed,” March 30, 2004; http://www.nps.gov/history/heritageareas/LEG/gao_report.pdf

GAO also stated that the individuals and groups that the agency contacted “were unable to provide us with any examples of a heritage area directly affecting— positively or negatively— private property values or use.”³⁴

The GAO, unfortunately, did not independently review the impact of NHAs, analyze any changes in local zoning resulting from NHA designation, or interview local property owners. The agencies determination was based solely on conversations with “officials at the 24 heritage areas, Park Service headquarters and regional staff working with these areas, and representatives of six national property rights groups.”³⁵

In reviewing the impact of the Yuma Crossing National Heritage Area designation during the 109th Congress, the House Resources Committee noted with concern that “the fear of adverse impacts on private property rights were realized when local government agencies began to use the immense heritage area boundary to determine zoning restrictions.”³⁶

Home owners and local businesses are clearly put at a disadvantage when the NHA management entity, bankrolled with millions of dollars from the federal government, coordinates with special interest groups to enact zoning rules limiting the use of land within a community. Federal funds should not be used to finance efforts to influence local zoning or land use restrictions.

There has never been an examination of the impact of a NHA designation on private property by any Senate Committee. The Senate does not even consider such decisions important enough to debate. Until 2008, nearly all NHA designations were “hotlined,” which is Senate process by which legislation is approved as part of a unanimous consent request made during the wrap up of a legislative day without discussion, debate, amendments, or votes.

This Amendment Does Not Defund NHAs, But Merely Requires NHAs To Respect Landowners’ Rights and Receive Local Support To Qualify For Some Federal Funds

This amendment would simply require that beginning in Fiscal Year 2010, before any NHA could receive federal funds, it must:

³⁴ Testimony of Barry T. Hill, Director Natural Resources and Environment, United States General Accounting Office, before the U.S. Senate Committee on Energy and Natural Resources, “NATIONAL PARK SERVICE: A More Systematic Process for Establishing National Heritage Areas and Actions to Improve Their Accountability Are Needed,” March 30, 2004;

http://www.nps.gov/history/heritageareas/LEG/gao_report.pdf

³⁵ Testimony of Barry T. Hill, Director Natural Resources and Environment, United States General Accounting Office, before the U.S. Senate Committee on Energy and Natural Resources, “NATIONAL PARK SERVICE: A More Systematic Process for Establishing National Heritage Areas and Actions to Improve Their Accountability Are Needed,” March 30, 2004;

http://www.nps.gov/history/heritageareas/LEG/gao_report.pdf .

³⁶ Report 109-294, November 15, 2005, page 2.

- 1) Notify landowners that their property is contained within the NHA’s boundaries; and
- 2) Remove any property for which the owner has not provided the managing entity written consent for inclusion within the NHA.

These requirements would ensure respect for the rights of landowners and ensure that NHAs truly have local support.

Even if a NHA failed to meet these conditions, it may still receive other government funding since public financing for NHAs has not been limited to the NPS. NHAs have received additional taxpayer funding from: The Departments of Agriculture, Commerce, Education, Housing and Urban Development, and Transportation; the Environmental Protection Agency, Army Corps of Engineers, National Endowment for the Arts, and Amtrak; other federal earmarks; and state and local governments.³⁷

Over the past five fiscal years (FY2005-FY2009), Congress has appropriated \$72.2 million to the NPS for NHAs.³⁸

Fiscal Year	Funding Amount
2005	\$14.6 million
2006	\$13.3 million
2007	\$13.3 million
2008	\$15.3 million
2009	\$15.7 million
Total	\$72.2 million

The Obama Administration requested \$15.7 million for NHAs in FY2010. The House and the Senate Appropriations Committees approved higher levels—\$17.8 million and \$17.7 million, respectively—in the FY2010 Interior appropriations bill (H.R. 2996).

³⁷ Cheryl Chumley and Ronald D. Utt. “National Heritage Areas: Costly Economic Development Schemes that Threaten Property Rights,” The Heritage Foundation Backgrounder, October 23, 2007, page 3, <http://www.heritage.org/research/smartgrowth/bg2080.cfm> .

³⁸ Carol Hardy Vincent. “Heritage Areas: Background, Proposals, and Current Issues,” Congressional Research Service, August 6, 2009.